

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Revision of the Commission's Rules) CC Docket No. 94-102
To Ensure Compatibility with) RM-8143
Enhanced 911 Emergency Calling Systems)

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To: The Commission

**REPLY COMMENTS AND WRITTEN EX PARTE PRESENTATION
OF AMERITECH**

Ameritech Corporation (Ameritech), by its attorneys, respectfully submits these Reply Comments to the Oppositions and Comments filed in response to BellSouth's and CTIA's Petitions for Reconsideration of the Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (Memorandum Opinion and Order), CC Docket No. 94-102, RM-8143, FCC 97-402, released Dec. 23, 1997 [hereinafter E911 Recon. Order].¹

In response to the E911 First Report and Order,² Ameritech filed a Petition for Partial Reconsideration requesting the Commission to adopt liability limitations and to clarify several cost recovery issues. Because the Commission declined to grant Ameritech's requests in this regard, Ameritech supports the requests of BellSouth and CTIA for the Commission to resolve these

¹ Ameritech addresses several cost recovery issues which relate to issues raised by BellSouth and CTIA. To the extent that Ameritech's comments concerning cost recovery are not within the scope of issues raised by BellSouth and CTIA, Ameritech respectfully requests the Commission to consider its cost recovery comments as a written ex parte presentation.

² Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (Report and Order and Further Notice of Proposed Rulemaking), CC Docket No. 94-102, FCC 96-264, released July 26, 1996.

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211

issues, and in general, supports their suggested approaches. Ameritech also supports CTIA's request that the carrier, not the PSAP, should be able to choose the technology it will use to transmit the information required in Phase I and Phase II. Furthermore, Ameritech requests the Commission's clarification concerning the six-month interval between the date a PSAP request is received and the date that the carrier must provide Phase I or Phase II services. These issues are addressed below.

I. The Provision of E911 Services Should Be Contingent Upon Adequate Federal and State Liability Limitations

In the E911 Recon. Order, the Commission declined to adopt liability limitations and affirmed its prior decision to leave liability protection up to the states.³ Now, BellSouth and CTIA have sought liability protection and have suggested the use of tariffs filed at the FCC. In the alternative, BellSouth proposes that wireless carriers should not be obligated to provide E911 services until the states limit their liability.⁴ CTIA alternatively proposed the filing of contracts or other reports.⁵ Ameritech supports the conditioning of E911 compliance obligations on the existence of adequate liability limitations.⁶

The Commission's hands-off approach to liability limitations has not worked. Liability limitations have yet to be adopted in all but one state where Ameritech provides wireless services. Carriers should not be required to provide E911 services without limitations of liability under

³ E911 Recon. Order para. 137.

⁴ BellSouth Petition at 4-6.

⁵ CTIA Petition at 13.

⁶ AT&T Wireless Comments at 6.

state law. Such liability protection should be equivalent to that afforded to wireline telephone services.

Federal limitations of liability may be needed regardless of any limitations adopted at the state level. If state legislation were to indemnify wireless carriers, it is possible that an injured party would seek damages under federal law. If the Commission were to permit carriers to file federal tariffs, as suggested by BellSouth and CTIA, carriers could establish their own liability limitations.

Ameritech disagrees with CTIA's proposals to permit the filing of contracts and reports at the FCC.⁷ Because a contract requires the agreement of two parties, it is unclear how the filing of a contract would limit the liability of a carrier for acts involving someone who is not a party to the filed contract. AT&T Wireless and RTG similarly note that it is impossible for wireless carriers to contractually limit their liability for 911 calls when the caller may not be a customer.⁸ Tariff filing would solve these problems because the establishment of liability limitations in a tariff does not require the prior consent of end users and others obtaining emergency services through wireless E911 calls.

Ameritech supports BellSouth's proposal to place choice-of-state-law provisions in a federal tariff.⁹ Calls received by an Ameritech PCS cell sites in Indiana may originate in Kentucky. Without clear-cut choice-of-law rules, Ameritech would need to work with all states

⁷ CTIA Petition at 13.

⁸ AT&T Wireless Comments at 6; RTG Comments at 2.

⁹ BellSouth Petition at 5-6.

that border the states in which it provides wireless services to ensure adequate liability limitations are provided by those surrounding states.

Ameritech opposes XYPOINT's comments concerning liability limitations. XYPOINT does not want the implementation of E911 services to be delayed pending the resolution of liability issues, while at the same time, XYPOINT admits that the limitation of liability is a "crucial issue."¹⁰ XYPOINT's position is internally inconsistent. If limiting liability is "crucial," it is "crucial" for the first 911 call and every call thereafter. Liability issues should be resolved before that first E911 call is made.

KSI also makes erroneous assertions that conditioning the provision of E911 services on the existence of liability limitations would raise issues concerning the FCC's jurisdiction and federal preemption.¹¹ KSI does not specify one "issue" that would be raised, nor could it. If the FCC has the jurisdiction to adopt 911 rules, it certainly can condition compliance on the existence of liability limitations. KSI's opposition to such requirements are merely a thinly veiled attempt to ensure that carriers obtain and use KSI's E911 services expeditiously -- without any apparent concern on KSI's part for the legal risks carriers would be exposed to in using KSI's services.

Ameritech also opposes the comments of the state of Hawaii concerning the need for liability limitations. Hawaii states that if liability is limited, carriers will not have the incentive to operate reliable E911 services.¹² But wireline carriers have had liability limitations in their tariffs for decades, and there has been no movement in the wireline industry toward unreliable service.

¹⁰ XYPOINT Comments at 2.

¹¹ KSI Comments at 5.

¹² Hawaii Comments at 2.

Hawaii admits that it has given liability limitations to its wireline telephone company, GTE, and that the savings that result from the reduced risk of liability are passed through to the ratepayers in the ratemaking process.¹³ But Hawaii ignores the fact that unlimited liability could translate to sky-high rates for wireless services.

The Ad Hoc Alliance for Public Access to 911 (Alliance) fares no better. Alliance asserts that it would support liability limitations if CMRS providers would agree to rate regulation, service area coverage requirements and the provision of service to low-income customers.¹⁴ But the risks of incorrectly transmitting a wireless 911 call have nothing to do with rate regulation, market penetration or the provision of service to low-income customers. Alliance seems to be advocating regulation for the sake of regulation. It has not shown how such regulation would reduce the risks inherent in the transmission of 911 calls.

In sum, Ameritech requests the Commission to condition a carrier's obligation to provide E911 services on the existence of adequate liability limitations at the state and federal levels. If the filing of tariffs at the FCC is the most efficient method to resolve liability under federal law, then Ameritech would support such tariff filing rights.

II. All Entities Involved in the Provision of E911 Services Should Be Allowed to Participate in Recovering Costs

Ameritech supports the Commission's prior decision to rely on state and local governments to establish funding mechanisms. Ameritech therefore agrees with CTIA's request

¹³ Id. at 9.

¹⁴ Alliance Comments at 9-10.

that the Commission clarify that CMRS providers should not be forced to recover their costs solely from their customers.¹⁵ A wireless 911 call may not necessarily be for the benefit of the wireless end user. The call may be made by a Good Samaritan who is assisting the person who needs an emergency response. Thus, wireless 911 service benefits the public at large -- not just wireless service customers.

Costs should be recovered through state funding mechanisms established by state legislatures, just as wireline 911 services are funded by states through legislation. There is no reason to treat cost recovery differently for wireline and wireless services.

Hawaii asserts that CTIA's request amounts to requiring PSAPs to pay the costs for E911.¹⁶ Hawaii misconstrues CTIA's Petition. CTIA meant only that its customers should not be the sole source of funding for wireless E911 services. Because wireless E911 services involve wireless carriers, PSAPs and wireline carriers, the funding should not come from wireless customers to the exclusion of the PSAPs and wireline customers. The funding mechanism should distribute the burden among all of those who benefit from E911 services.

III. The Commission Should Clarify How the Phase I Implementation Deadline Is Affected by the Adoption of a Cost Recovery Mechanism after the PSAP Has Requested Phase I Services

The E911 Recon. Order para. 90 n.222, and the E911 First Report and Order para. 64, make clear that a carrier's obligation to provide Phase I services does not begin until six months after it receives a request from a PSAP. Section 20.18(f) of the Commission's Rules makes clear

¹⁵ CTIA Petition at 17; see also AT&T Wireless Comments at 4.

¹⁶ Hawaii Comments at 6.

that the requirements to comply with Phases I and II do not apply unless the carrier has received a request from a PSAP and a cost recovery mechanism is in place. Ameritech supports CTIA's request that the six-month interval should be made part of Section 20.18(f).

However, additional clarification of Section 20.18(f) is needed. The six-month interval appears to have been based on an assumption that PSAPs would not make their requests until after the cost recovery mechanism is in place. In practice, the opposite has been true. PSAPs have requested Phase I services before state and local governments have resolved cost recovery issues. Ameritech requests the Commission to clarify its rules so that the six-month interval applies to the date of the PSAP request or the date that the cost recovery mechanism is in place, whichever occurs later. Section 20.18(f) could be replaced with a new Section 20.18(f), as follows:

(f) Conditions for Enhanced 911 Services The requirements set forth in paragraphs (d) and (e) of this section shall be applicable no sooner than six months after the later of: (a) the date that the administrator of the designated Public Safety Answering Point has requested the services required under those paragraphs and is capable of receiving and utilizing the data elements associated with the service; and (b) the date that a mechanism for recovering the costs of the service is in place.

In addition, Ameritech requests the Commission to define exactly when a cost recovery mechanism would be deemed to be "in place." Is it when a state legislature adopts a statute providing for cost recovery, or when the appropriate state agency is established, or when that agency is able to process requests for funding on a regular basis? Ameritech suggests that the cost recovery mechanism should be deemed to be "in place" no sooner than when the state funding mechanism is established and is ready to reimburse carriers for their costs.

IV. Carriers, not PSAPs, Should Choose the Technology to be Deployed for Phases I and II

CTIA requests the Commission to clarify that carriers, not PSAPs, should choose the technology used to transmit the information required in Phases I and II.¹⁷ Ameritech supports CTIA's request and agrees with AT&T Wireless' statement that if individual PSAPs were permitted to select the technology, wireless 911 systems would be "balkanized" rather than integrated into a seamless nationwide system.¹⁸

Any one carrier may serve dozens of different PSAPs. If the PSAPs were to select the technologies, the carrier may need to support dozens of different technologies. Then, as a call to 911 is made and the carrier determines which PSAP should receive the 911 call, the carrier would need to check its records as to which technology to use for that PSAP, and on a real-time basis, transmit the data to the PSAP using the appropriate technology. This method would introduce the possibility for error as the carrier would need to switch back and forth in fractions of a second as it processes 911 calls.

A more sensible approach would be for the carriers to select the technologies, and for the PSAPs to support the technologies used by the carriers that provide service in their areas. The PSAP could establish separate telephone numbers for each distinct technology, and any one carrier would need to know only the appropriate telephone numbers for its technology and the PSAPs in its service area. This method would reduce the risk of error because the carrier would

¹⁷ CTIA Petition at 18.

¹⁸ AT&T Wireless Comments at 3.

transmit its data using only one technology, and each telephone number at the PSAP would receive data according to only one technology.

Conclusion

Ameritech supports BellSouth's and CTIA's Petitions as they request the Commission to:

(a) condition the provision of E911 on the availability of liability limitations under state and federal law; (b) require that the costs of implementing E911 should not be borne solely by the wireless end users; and (c) require carriers, not PSAPs, to have the final say in selecting technologies to be used for Phases I and II. Ameritech also requests the Commission to clarify that if a cost recovery mechanism is not adopted until after a PSAP requests Phase I or Phase II services, the carrier will have six months after the state funding mechanism is operational in order to comply with the Phase I or Phase II requirements.

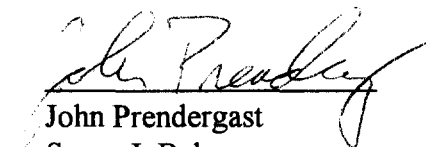
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April 1, 1998

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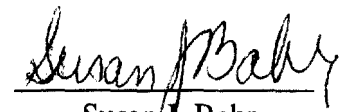
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